
Federal Communications Commission

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	File Number: EB-02-BF-344
M.J. Phillips Communications, Inc.)	
Radio Station WJL)	NAL/Acct.No. 200332280004
Niagara Falls, New York)	
)	FRN: 0004-9421-24
)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Released: January 28, 2003

By the Resident Agent, Buffalo Office, Enforcement Bureau:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture ("NAL"), we find that M.J. Phillips Communications, Inc ("Phillips"), licensee of radio station WJL, Niagara Falls, New York, apparently violated Sections 11.35(a), 11.52(d), 17.4(a), and 73.1560(a)(1)¹ of the Commission's Rules ("Rules") by failing to determine cause of any failure to receive the required EAS tests or activations and make the appropriate log entries, failing to monitor two EAS sources, failing to register the antenna structure, and failing to maintain operating power within 105 % of the authorized power. We conclude that Phillips is apparently liable for a forfeiture in the amount of ten thousand dollars (\$10,000).

II. BACKGROUND

2. On September 17 and 18, 2002, the Federal Communications Commission's ("FCC") Enforcement Bureau's Buffalo Office conducted an inspection of radio station WJL. The station studios are located in West Seneca, New York and the transmitter is located in Niagara Falls, New York. An agent conducted field strength measurements on the evening of September 17 and during the inspection on September 18. The field strength measurements indicated the station was exceeding the daytime authorized power of 1000 watts by 250% and exceeding the authorized nighttime power of 55 watts by 900%. According to the station log, no EAS tests had been received or sent since July 23, 2002. The station had the capability to monitor only one EAS source. There were no entries in the station log indicating the failure to receive the required EAS tests or notifications. The antenna structure located at 43° 04' 52" North Latitude and 70° 00' 58" West Longitude in Niagara Falls, New York, was not registered with the Commission. The written designation of the chief operator was not available.

3. On September 23, 2002, the Buffalo Office issued a Notice of Violation ("NOV") to Phillips,

¹ 47 C.F.R. §§ 11.35(a), 11.52(d), 17.4(a), and 73.1560(a)(1).

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citing Sections 11.35(a), 11.52(d), 11.61(a)(1)(i), 11.61(a)(2)(i)(A), 17.4(c), 73.1125(d)(1), 73.1560(a)(1), and 73.1870(b)(3)². On October 6, 2002, Phillips submitted a written response. The response stated that the failure to conduct and log required EAS tests was inadvertent and the problem will not reoccur, the station was now monitoring two EAS sources, the station will submit proper forms to register the tower, and the station provided a copy of the written chief operator designation. The station's response also stated that the cause of the overpower operation was due to a technical malfunction.

III. DISCUSSION

4. Section 11.35(a) of the rules requires broadcast stations to determine the cause of any failure to transmit or receive the required EAS tests or activations specified in Sections 11.61(a)(1) and (2). Appropriate entries shall be made in the station log indicating reasons why tests were not received. According to the station log, no EAS tests or activations were sent or received from July 23, 2002 through September 17, 2002. There were no entries in the station log indicating reasons why the tests were not received.

5. Section 11.52(d) of the rules required broadcast stations to monitor two EAS sources. At the time of inspection, the EAS equipment was capable of monitoring only one EAS source.

6. Section 17.4 (a) of the rules requires the owner of any existing antenna structure that requires notice of proposed construction to the Federal Administrative Administration to register the structure with the Federal Communications Commission. According to Commission records, the antenna structure located at 43° 04' 52" North Latitude and 70° 00' 58" West Longitude in Niagara Falls, New York, was not registered.

7. Section 73.1560(a)(1) of the rules requires broadcast stations to maintain their operating power as near as practical to the authorized input power and may not be more than 105% of the authorized power. Field strength measurements conducted on September 17 and 18, 2002 indicated the station's operating power exceeded the authorized daytime power of 1000 watts by at least 250% and exceeded the authorized nighttime power of 55 watts by at least 900%.

8. Based on the evidence before us, we find that on September 17 and 18, 2002, Phillips willfully³ and repeatedly⁴ violated Section 11.35(a), 11.52(d), 17.4(a), and 73.1560(a)(1) of the Rules by failing to determine the cause of failure to transmit receive the required EAS tests or activations and make the appropriate log entries, failing to monitor two EAS sources, failing to register the antenna structure, and

² 47 C.F.R. §§ 11.61(a)(1)(i), 11.61(a)(2)(i)(A), 17.4(c), 73.1125(d)(1), and 73.1870(b)(3). The NOV cited Section 17.4(c), which was a typographical error since the text was for Sect.17.4(a), tower registration, the violation verbally advised during inspection and responded to by the licensee.

³ Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to Section 503(b) of the Act, provides that "[t]he term 'willful', when used with reference to commission or omission of any act, means that conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act..." See *Southern California Broadcasting Co.*, 6 FCC Red 4387 (1991).

⁴ Section 312(f)(2), which also applies to Section 503(b), provides: [t]he term "repeated", when used with reference to the commission or omission of any act, means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day.

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failing to maintain the authorized operating power. *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, 12 FCC Rcd 17087, 17113 (1997), *recon. denied*, 15 FCC Rcd 303(1999) ("*Forfeiture Policy Statement*")⁵, sets the base forfeiture amount for failure to maintain required records at \$1,000, failure to make the required measurements or conduct the required monitoring at \$2,000, failure to file required forms or information at \$3,000 and exceeding power limits at \$4,000. In assessing the monetary forfeiture amount, we must take into account the statutory factors set forth in Section 503(b)(2)(D) of the Communications Act of 1934, as amended, ("Act"),⁶ which include the nature, circumstances, extent, and gravity of the violation, and with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require. The record shows Phillips has a history of prior violations, and the over-power violation was egregious. Applying the *Forfeiture Policy Statement* and the statutory factors to the instant case and applying the inflation adjustments, we believe that a ten thousand dollar (\$10,000) forfeiture is warranted.

IV. ORDERING CLAUSES

9. Accordingly, IT IS ORDERED THAT, pursuant to Section 503(b) of the Act,⁷ and Sections 0.111, 0.311 and 1.80 of the Rules,⁸ Phillips is hereby NOTIFIED of its APPARENT LIABILITY FOR A FORFEITURE in the amount of ten thousand dollars (\$10,000) for violating Sections 11.35(a), 11.52(d), 17.4(c), and 731560(a)(1) of the Rules.

10. IT IS FURTHER ORDERED THAT, pursuant to Section 1.80 of the Rules, within thirty days of the release date of this NOTICE OF APPARENT LIABILITY, Phillips SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

11. Payment of the forfeiture may be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should note the NAL/Acct. No. 200332280004, and FRN 0004-9421-24.

12. The response, if any, must be mailed to Federal Communications Commission, Office of the Secretary, 445 12th Street, SW, Washington, DC 20554, Attn: Enforcement Bureau-Technical & Public Safety Division, and MUST INCLUDE THE NAL/Acct. No. 200332280004.

13. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices ("GAAP"); or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial

⁵ 47 C.F.R. § 1.80.

⁶ 47 U.S.C. § 503(b)(2)(D).

⁷ 47 U.S.C. § 503(b).

⁸ 47 C.F.R. §§ 0.111, and 0.311.

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documentation submitted.

14. Requests for payment of the full amount of this Notice of Apparent Liability under an installment plan should be sent to: Federal Communications Commission, Chief, Revenue and Receivables Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.⁹

15. Under the Small Business Paperwork Relief Act of 2002, Pub L. No. 107-198, 116 Stat. 729 (June 28, 2002), the FCC is engaged in a two-year tracking process regarding the size of entities involved in forfeitures. If you qualify as a small entity and if you wish to be treated as a small entity for tracking purposes, please so certify to us within thirty (30) days of this NAL, either in your response to the NAL or in a separate filing to be sent to the Technical and Public Safety Division. Your certification should indicate whether you, including your parent entity and its subsidiaries, meet one of the definitions set forth in the list provided by the FCC's Office of Communications Business Opportunities (OCBO) set forth in Attachment A of this Notice of Apparent Liability. This information will be used for tracking purposes only. Your response or failure to respond to this question will have no effect on your rights and responsibilities pursuant to Section 503(b) of the Communications Act. If you have questions regarding any of the information contained in Attachment A, please contact OCBO at (202) 418-0990.

16. IT IS FURTHER ORDERED THAT a copy of this NOTICE OF APPARENT LIABILITY shall be sent by Certified Mail Return Receipt Requested, to M.J. Phillips Communications, Inc., 920 Union Road, West Seneca, New York 14224.

FEDERAL COMMUNICATIONS COMMISSION

David A. Viglione
Resident Agent
Buffalo Office

⁹ See 47 C.F.R. § 1.1914.